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Unknown.

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BRIEF

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DOCKET NO. 6049 A-DPR

In the Supreme Court of the State of Utah

CALIFORNIA PACKING COR-
PORATION, a corporation,

Plaintiff,

vs.

STATE TAX COMMISSION,

Defendant.

Case No. 6049

ANSWER TO DEFENDANT'S PETITION FOR REHEARING

The defendant in the above entitled case has filed a Petition for Rehearing in which it has pointed out matters which it considered to be contradictory in the opinion. At the outset, it has said that the decision was rendered in favor of the defendant. If this is true, it seems incomprehensible to us that it should petition the Court for a rehearing. The context of its petition contradicts the original statement and in our opinion points out to the Court just exactly what the court did hold and the basis upon which the income of the plaintiff company is to be allocated to the State of Utah. We are filing this answer to the petition to set forth plainly to the court just exactly how we interpret the decision and to point out where the defendant has made its errors in

its interpretation. We believe that we can very briefly answer the 3 points which are attempted to be made by the defendant. However, we shall not take up the points made by the defendant in the same order as they appear in the Petition for Rehearing for the reason that we intend concretely to set forth the actual situations as to sales made by the company and how we think the Court's decision covers these actual transactions.

I. The second point made by the defendant is, "There are seeming inconsistencies between the construction and the application of the section". This whole argument set forth in the petition seems to be premised on a separate reading of various sentences in the decision rather than upon the reading of the decision as an integrated whole. The point which the defendant attempts to make is that sales made by brokers or agents located within the State of Utah, whose chief business is the selling of products to out of state purchasers are not to be included in the sales factor in determining income attributable to business done within the State of Utah. It then assumes that if the same sort of sales are made from goods stored within the State of Utah by brokers or agents whose chief place of business is outside the State of Utah, then that such sales made by brokers or agents located outside the State of Utah of goods manufactured in Utah to out of state purchasers should be included in determining the income to be allocated to Utah. Certainly any such interpretation of the decision of the Court as to the meaning of the statute is far

fetched and is contrary to the whole context of the decision, because sales through brokers located outside of the State of Utah of goods manufactured in the State of Utah could neither be interpreted to be sales made in the State of Utah nor could they fall within the so-called exception.

II. The third point in defendant's Petition is, "As an alternative measure of the gross receipts from the business done in the State, the factor adopted by the defendant should be the measure of the gross receipts." Our answer to this contention is that had the Legislature so intended to make this measure of income to be attributable to business done in the State of Utah, they would have said so in so many words. It seems to us that the defendant has over-looked the whole conception of the allocation factors. The Company is in the business of manufacturing and merchandising. The main activity of the company in the State of Utah is manufacturing. In this connection, the company maintains canneries in the State of Utah. The value of the canneries enters into the tangible property portion of the factor. The company employs a large number of persons to pack their products in this State and their wages enter into the wages and salaries portion of the factor. The company has no sales office or salesmen who make sales in the State of Utah. As far as the merchandising end of the business is concerned, that is not conducted in the State of Utah, and any of their products which are ultimately sold in the State of Utah are out of all proportion

with the amount which is packed in the State of Utah and upon which income is allocated through the use of the tangible property and wages and salaries factors. By the exclusion of sales, the tax paid upon income of the company for business done in the State of Utah is equalized to make it proportionate with the business done in all other states. The Court can readily realize that merchandising is just as necessary and just as important to the company as is manufacturing.

III. The first point made in the Petition is "The construction given of subhead (1st) of subdivision (E) of subsection 6 of Section 80-13-21, Revised Statutes of Utah, 1933, might not accomplish the result intended by the Court." The argument made under this point presupposes that the defendant has properly construed the intention of the Court. We will agree that it is the intention which the defendant would like the Court to have, but that it certainly is not the intention of the Court as we read the decision. In order clearly to set forth to the Court our interpretation of the decision and the manner in which it affects this company as to its allocation of income, we shall briefly state all possible types of sales made by the company and the result which we believe the Court has arrived at in determining whether or not those sales should be used in the allocation fraction in determining income to be attributable to business done in Utah.

We will attempt to outline briefly the method used by the California Packing Corporation in merchandising

its products. Throughout the United States (including Utah) are various independent brokers who solicit orders on its behalf. These orders are submitted to the main office in San Francisco for confirmation as to quantity, price, shipment, etc. When the order is accepted in San Francisco the merchandise is shipped under instructions from the buyer and direct to the buyer. The merchandise shipped may originate in any of several states: for example, pineapple in Hawaii; corn in Minnesota; peas in Utah; peaches, apricots and pears in California, etc.

At no time does the broker purchase merchandise for his own account. He acts merely as a middleman selling the corporation's merchandise and receiving a commission for his work. This type of independent broker is the only sales representative in the State of Utah. There is an organization called "The California Packing Sales Company" which is a separate and distinct entity and which employs what are known as specialty men. These specialty men merely promote the sales of products canned by the California Packing Corporation. The specialty men may secure orders for California Packing Corporation merchandise and turn these orders over to the wholesaler in a particular district. The wholesaler places the orders for the goods through the California Packing Corporation brokers who in turn submit the orders to San Francisco for confirmation. The following are the types of sales which it is possible for the company to make and our analysis of those sales in light of the decision of the Supreme Court.

A. A broker located outside the State of Utah solicits an order from a purchaser in a State other than Utah. Under the decision of the Court, both the majority and the minority, such a sale is not a Utah sale, irrespective of whether the goods are stored outside the State of Utah or in the State of Utah.

B. A broker located outside the State of Utah solicits an order from a purchaser in the State of Utah. Under the majority and the minority opinions, such a sale is not a Utah sale, irrespective of whether the goods are stored outside the State of Utah or in the State of Utah. This situation is a possible transaction, but does not actually occur in the business conducted by the company.

C. A broker located in Utah solicits an order from a purchaser in a state other than Utah. Under the majority and minority opinions such a sale is not a Utah sale, irrespective of whether the goods are stored outside the State of Utah or in the State of Utah.

D. A broker located in Utah solicits an order from a purchaser in Utah.

1. If the merchandise was stored in the State of Utah under the ruling of the Court such a sale is a Utah sale and should be taken into consideration in the allocation fraction.

2. If the merchandise was not stored in the State of Utah, under both the majority and minority opinions the sale is not a Utah sale.

SUMMARY

It has been demonstrated that the opinion of the Court is perfectly consistent and can be applied to the facts in this case to properly allocate to the State of Utah every cent of income which is attributable to business done within this state. There is no reason why the Court should grant the Petition for Rehearing for the reason that, as we have shown, the opinion as written clearly indicates to the Tax Commission the method in which they must allocate income attributable to business done within this state.

Respectfully submitted,

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NED WARNOCK,

Attorneys for Defendant.